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Attorneys for Defendant  
THA BUN HENG

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	No. CR-S 04-205-GEB
Plaintiff,	)	
v.	)	STIPULATION RE: RESENTENCING
THA BUN HENG,	)	OF THA BUN HENG
Defendant.	)	Hon. Garland E. Burrell, Jr.

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In a written order filed March 12, 2008, the Ninth Circuit granted the parties' stipulated motion to vacate the sentences of defendants Tha Bun Heng, Chhom Mao, and Cleve Earl Buckley, Jr., and to remand for reconsideration of their sentences in light of the Supreme Court's intervening decision in Kimbrough v. United States, 128 S.Ct. 558 (Dec. 10, 2007). On remand, the defendant Tha Bun Heng, through his attorney John Balazs, and the the United States, through its counsel, Assistant U.S. Attorney Carolyn Delaney, hereby stipulate and request that Heng be re-sentenced to 121 months imprisonment as follows:

1. After a jury trial, defendant Tha Bun Heng was convicted of one count of possession with intent to distribute cocaine base and one count of distribution of cocaine base. On April 13, 2007, the district court determined that Heng's total offense level was

1 34 and his criminal history category was II. As a variance under 18 U.S.C. § 3553(a), the  
2 Court reduced his criminal history category from II to I so as not to count his juvenile  
3 conviction, and determined his final guideline range to be 151-188 months. The Court  
4 then sentenced Heng to the bottom of the guideline range, or 151 months imprisonment.  
5 In so doing, the Court rejected Heng's argument that the 100:1 crack versus powder  
6 cocaine quantity ratio warranted a below-guidelines sentence in light of all the  
7 circumstances of this case under § 3553(a).

8 2. After sentencing, the Supreme Court decided Kimrough v. United States,  
9 128 S.Ct. 558, 664 (Dec. 10, 2007), which held that district courts may consider the  
10 disparity between the Guidelines' treatment of crack and powder cocaine offenses in  
11 determining what sentence is sufficient, but not greater than necessary to satisfy, the  
12 purposes of sentencing in § 3553(a). In light of the intervening precedent of Kimrough,  
13 the Ninth Circuit granted the parties' stipulated motion to vacate the defendant's sentence  
14 and to remand for re-sentencing. See Attached Order, filed March 12, 2008. The Ninth  
15 Circuit issued its mandate on May 2, 2008.

16 3. At his initial sentencing, Heng's offense was found to have involved 375.52  
17 grams of cocaine base, which equated to a level 34 at his original sentencing. There were  
18 no other adjustments applied to the guideline offense level. Since the original sentencing  
19 on April 13, 2007, the U.S. Sentencing Commission amended the guideline offense level  
20 for crack cocaine offenses in a way that generally reduces the applicable offense levels in  
21 crack cocaine cases by 2-levels. See U.S.S.G. § 2D1.1, (amendment 217) (eff. May 1,  
22 2008). This amendment was made retroactive by the Sentencing Commission pursuant to  
23 18 U.S.C. § 3582(c)(2) and U.S.S.G. § 1B1.10. On remand, Heng is now eligible for a  
24 sentence reduction under this retroactive guideline amendment. See United States v.  
25 Grissom, No. 06-10688, 2008 U.S. App. Lexis 8024 (Apr. 15, 2008). Heng now moves  
26 for a sentencing reduction under this amendment pursuant to 18 U.S.C. § 3582(c)(2).  
27 With the 2-level reduction under the retroactive crack cocaine guideline amendment,  
28 Heng's guideline offense level becomes 32 and his final guideline range (with the variance

1 from criminal history category II to I) is 121-151 months imprisonment.

2 4. On remand for resentencing and pursuant to Heng's request 18 U.S.C.  
3 § 3582(c)(2), the parties thus stipulate that the Court grant retroactive application of the  
4 crack cocaine amendment and stipulate that the appropriate sentence in this case is 121  
5 months imprisonment, the bottom of the amended guideline range. The parties agree that  
6 this sentence is "sufficient, but not greater than necessary, to comply with" the purposes of  
7 sentencing set forth in 18 U.S.C. § 3553(a). The parties also agree that all other aspects of  
8 Heng's sentence on April 20, 2007 shall remain the same. This stipulation does not affect  
9 Heng's right to appeal his convictions in this case and any challenges Heng may have on  
10 appeal to his convictions.

11 5. Defendant Tha Bun Heng is currently incarcerated at FCI California City,  
12 California. Heng has been advised of his right to be present for resentencing. Pursuant to  
13 Federal Rule of Criminal Procedure 43(c)(1)(B), Heng has executed the attached waiver of  
14 his right to be present at any re-sentencing proceeding. He also waives his rights to be  
15 present and to allocution at re-sentencing. He also agrees to the stipulated sentence of 121  
16 months imprisonment.

17 Respectfully submitted,

18  
19 DATED: May 12, 2008

20 /s/ John Balazs  
21 JOHN BALAZS  
22 Attorney for Defendant  
23 THA BUN HENG

24  
25 DATED: May 13, 2008

26 McGREGOR W. SCOTT  
27 U.S. Attorney

28 By: /s/ Carolyn Delaney  
CAROLYN DELANEY  
Assistant U.S. Attorney  
  
Attorney for Plaintiff  
United States of America

**DEFENDANT THA BUN HENG'S  
WAIVER OF PRESENCE AT RE-SENTENCING**

I, Tha Bun Heng, am currently incarcerated at FCI California City, California. I have been advised of my right to be present for re-sentencing. I knowingly and voluntarily waive my right to be present and my right to allocution at re-sentencing. I also agree to the stipulation for a 121 month sentence on remand after my appeal.

DATED: May 12, 2008

/s/ Tha Bun Heng \_\_\_\_\_  
THA BUN HENG  
Defendant  
[original signature on file]

**ORDER**

For the reasons set forth in the attached stipulation of the parties, on remand from appeal, the Court hereby re-sentences defendant Tha Bun Heng to 121 months imprisonment in *United States v. Heng*, CR 04-205-GEB. All other aspects and conditions set forth in the judgment filed on April 20, 2007 shall remain the same. The clerk is directed to issue an amended judgment reflecting the new sentence.

Dated: May 14, 2008

  
GARLAND E. BURRELL, JR.  
United States District Judge